



Contract No. 9385	Station n/a	Mile/Line: I-90	C/S
Staked by	Date	Work Started Date	Work Completed Date
Calculated by Mark Lee	Date 12/5/2019	Checked by	Inspector
			Date

Bid Item 082

OTHER TRAFFIC CONTROL LABOR

12/5/2019 MEL

\$167,316.48 was scheduled to be deferred on this estimate.

$\$167,316.48 / \$135.00 \text{ dollars per hour} = 1239.38 \text{ hours}$

$1239.38 \text{ hours} \times \$135.00 \text{ dollars per hour} = \$167,316.30$ is the actual amount being deferred.

See attached letter dated 12/17/2019

3/17/2020 MEL

Per the attached letter, \$71,546.68 will need to be released from the previous deferral.

\$95,769.80 will need to be deferred.

$\$167,316.48 - \$71,546.68 = \$95,769.80$

$\$95,769.80 / \$135.00 \text{ per hour} = 709.41 \text{ Hours}$

$709.41 \text{ hours} \times \$135.00 \text{ per hour} = \$95,770.35$ is the actual current amount being deferred.

5/28/2020 MEL

Per the attached letter, the 701.41 hours which were deferred on Estimate 13/14 need to be released. This will undefer ledger entry 520 on a supplemental Estimate 16.

Item Num	Material Brand Name/Model Type	Manufacturer	Brand Name/Model Type	RAMS/QPL Ref. No.	Appr/Acc Code	Basis of Accept
					/	

Item Num	Item Description	Grp	Date Work Complete	Unit	Quantity	Ledger Entry No.	Posted By Init.	Posted By Date	Checked By Init.	Checked By Date	Est. No.
0082		1	12/5/2019	HR	-1239.38	436	MEL	12/05/19	EK	12/05/19	10

	OTHER TRAFFIC CONTROL LABOR										
0082	OTHER TRAFFIC CONTROL LABOR	1	12/19/20...	HR	1239.38	437	MEL	12/05/19	EK	12/05/19	10
0082	OTHER TRAFFIC CONTROL LABOR	1	3/5/2020	HR	-709.41	532	MEL	04/13/20	EK	04/13/20	14
0082	OTHER TRAFFIC CONTROL LABOR	1	3/5/2020	HR	709.41	520	MEL	03/17/20	EK	04/13/20	14

Attachments



9385 026 - Payment
Withholding Final.pdf
Adobe Acrobat Document
109 KB



Undeferral Payment
email.pdf
Adobe Acrobat Document
38.5 KB



509 Release Packet.pdf
Adobe Acrobat Document
1.07 MB

DOT Form IP 422-635ER EF
Revised 4/2009



Dan Kuney
Max J Kuney
120 N Ralph Street
Spokane, WA 99205

5/5/2020

RE: Contract 9835
Bullfrog Rd Vic – Concrete Rehab, Bridge Deck Rehab, & Painting
Federal-Aid Project No. NHPP-0090(023), 0902(241), 0902(452)

Dan,

The purpose of this letter is to give official notice that 509 Excavating LLC intends to request approval from all parties involved in WSDOT Contract 9835 that 509 Excavating LLC voluntarily dismiss itself with prejudice from our contract with Max J Kuney and the Bullfrog Bridges project.

509 Excavating LLC seeks this approval without admission of guilt, wrongdoing, or fault. This request is based on the terms set forth in the attached Memorandum of Understanding between MJK and 509 Excavating provided by MJK on 4/29/2020.

All parties will part amicably and not disparage the other.

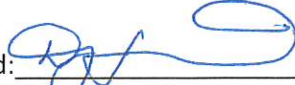
David J Cranefield
President

Memorandum of Understanding:

*Max J Kuney Company (MJK) and 509 Excavating Settlement Agreement
4/29/2020 (updated 5/6/2020)*

Memorandum of Understanding between MJK and 509 Excavating

1. MJK will issue an addendum(s) for a "clear all" settlement with 509 Excavating for Global Survey, Vertical Edge, Lack of Work Zone, and all other requests for equitable adjustment; this addendum will also remove the separation layer and other remaining work for the 2020 season from 509's subcontract. When combined with retainage of \$36,001.04, this addendum will result in **\$475,000.00** in funds available to pay lower tier subs/suppliers and labor claims. The only exclusions to this "clear all" are unpaid quantities and force account, if owed by WSDOT.
2. 509 Excavating will sign the addendum and any other outstanding unsigned addendums issued unilaterally.
3. 509 Excavating will provide written notice of its desire to voluntarily withdraw from the project – per WSDOT UDBE Termination Standard Specification language.
4. MJK will work with 509 Excavating to simultaneously joint check NC Machinery in an amount equal to \$175,000 and lower tier subs/suppliers chosen by 509 (trucking firms) in any amount not to exceed \$168,000. Lien/Claim releases will be required for each sub/supplier paid releasing MJK and its Surety. Approved joint check agreements signed by WSDOT and 509 Excavating will be required for each sub/supplier paid.
 - These payments will be made as soon as lien releases and joint check agreements are received by MJK, and will not have to wait on any payments from WSDOT to MJK. All parties agree in good faith to try and expedite the lien release / joint check process such that 509 Excavating has joint checks in hand by **May 8th**. It will then be 509 Excavating's responsibility to sign each joint check and deliver it to the appropriate party expeditiously.
5. The remaining \$132,000 (\$95,998.96 of available funds and \$36,001.01 of retainage), will be used to pay labor claims from the Operators and Laborers Unions. Or, if 509 Excavating demonstrates that it has paid the Unions and MJK receives a release from each Union, then this money can be paid to additional lower-tier subs/suppliers at 509 Excavating's direction with approved Joint Check Agreements along with Lien/Claim Releases in favor of MJK and its Surety. If both the Unions and all lower-tier subs/suppliers have been paid, any remaining funds would be paid direct to 509 Excavating. To date, the exact amount of the labor claims attached to the Bullfrog project are unknown. MJK and 509 Excavating will work together in good faith to determine the amounts owed on the Bullfrog project and pay the unions expeditiously.
6. 509 Excavating will complete all final paperwork required by MJK and WSDOT – per typical project closeout procedures prior to all retainage being released.
7. All parties will part amicably and not disparage the other.

Signed: 
Name: DAVE CRANFIELD
Date: 5/8/2020

509 Excavating

Signed: _____
Name: _____
Date: _____

Max J. Kuney Company



To: 509 Excavating LLC
113 Wright Ave
Cle Elum WA 98922

Contract Reference:

Bullfrog Rd - Rehab & Painting
WSDOT # C-9385
MJK - 124

Addendum No. 9

Your subcontract amount is hereby modified in accordance with changes as itemized:

Item	Description	Quantity	Unit	Unit	Total
	Final Clear All Settlement	1.00	LS	\$ 256,793.00	\$ 256,793.00
					\$ -

This addendum also includes the following provisions:

- 1 All funds will be distributed to 509 as dictated in the attached Memorandum of Understanding (MOU)
- 2 MJK will reverse \$72,082.80 in back charges
- 3 MJK will release the withheld payment from Est. 7-11 totaling \$110,0123.16
- 4 MJK will release withheld retainage in the amount of \$36,001.04 per the MOU, once all final paperwork is submitted
- 5 **Total payment to 509 will be \$256,793 + \$72,082.80 + \$110,123.16 + \$36,001.04 = \$475,000.00**
- 6 By signing this addendum 509 also agrees to all previously unsinged addendums, specifically #4, 7 and 8 (see attached)
- 7 509 agrees to the terms in the attached MOU.
- 8 509 agrees to voluntarily withdraw from the project and provide written notice per MOU.
- 9 This settlement resolves in full all issues between 509 and MJK or their subcontractors..

All other terms, conditions, articles and other provisions of the original subcontract remain the same and become a part of this change of subcontract

TOTAL AMOUNT THIS ADDENDUM \$ 256,793.00

ORIGINAL SUBCONTRACT AMOUNT \$ 760,222.33
Including changes prior to this addendum

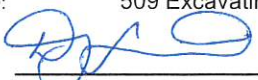
REVISED SUBCONTRACT AMOUNT \$ 1,017,015.33

Except as set forth above, all other terms and conditions remain unchanged. Please indicate your acceptance by signing in the space provided. **Retain one copy for your file and return one copy to Max J. Kuney Company.**

ACCEPTED: 509 Excavating LLC

MAX J. KUNEY COMPANY

Signed:


(Name)
President

BY:

Leanne Miller
Project Manager

TITLE:

DATE:

5/8/2020

DATE:



To: 509 Excavating LLC
113 Wright Ave
Cle Elum WA 98922

Contract Reference: Bullfrog Rd - Rehab & Painting
WSDOT # C-9385
MJK - 124

Addendum No. 8

Your subcontract amount is hereby modified in accordance with changes as itemized:

Item	Description	Quantity	Unit	Unit	Total
	Unsuitable Foundation Excavation Incl				
9	Haul	-584.90	CY	\$ 22.34	\$ (13,066.67)
13	Separation Layer	-6.53	AC	\$ 18,142.74	\$ (118,472.09)
15	Quarry Spalls (Install Only)	-270.00	CY	\$ 2.11	\$ (569.70)
				\$	-
				\$	-

*****Attached verbiage to become a part of this addendum to the subcontract
Signing Addendum #8 will also be approval for Addendum #4 2019 Deletion
& Addendum #7 2020 Deletion*****

All other terms, conditions, articles and other provisions of the original subcontract remain the same and become a part of this change of subcontract

TOTAL AMOUNT THIS ADDENDUM \$ (132,108.46)

ORIGINAL SUBCONTRACT AMOUNT \$ 892,330.79
Including changes prior to this addendum

REVISED SUBCONTRACT AMOUNT \$ 760,222.33

Except as set forth above, all other terms and conditions remain unchanged. Please indicate your acceptance by signing in the space provided. **Retain one copy for your file and return one copy to Max J. Kuney Company.**

ACCEPTED: 509 Excavating LLC

MAX J. KUNEY COMPANY

Signed: 
(Name)

BY: _____

Leanne Miller
Project Manager

TITLE: 5/8/2020

DATE: PRESIDENT

DATE: _____



AFFIDAVIT AND PARTIAL RELEASE OF LIENS/CLAIMS

Max J. Kuney Company

120 N Ralph St.
Spokane, WA 99202

PROJECT NAME:	Bullfrog Vic - Rehab & Painting
PROJECT NO:	009385
KUNEY'S SUBCONTRACTOR:	509 Excavating LLC
SUBCONTRACT DATE:	05.01.19
SUBCONTRACT NO:	80002
PROJECT PAYMENT REQUEST NO:	11
SUBCONTRACT PAYMENT REQUEST NO:	11
PERIOD FROM:	Start
TO:	05.06.2020

Waiver and Release

The undersigned, upon receipt of the payment by Max J. Kuney Company and/or it's subcontractor/supplier of certain Subcontract/Purchase Agreement balances in the amount of \$475,000.00 (including retainage), and except for pending change orders/claims that are listed on the attached **Appendix A**, and for other good and valuable consideration, does hereby waive and release any and all claims of any type, kind or character, or liens of any type, kind or character, including, but not limited to, mechanic's or materialman's lien, equitable lien, contract claim, stop notice, bond or retainage claim (public or private) that the undersigned has or may ever had in any manner arising out of any work, labor, services, equipment, material or supplies furnished by or through the undersigned in connection with the Project and/or the above-referenced Subcontract/Purchase Agreement through the date of 05.06.2020.

In consideration of the above-referenced Payment Request Number, the undersigned hereby agrees to indemnify, defend and hold (Owner), CONTRACTOR, and it's surety (if any) harmless from any claim, cause of action or liability by any party, including but not limited to damages of whatever nature, costs, expenses, interest, or attorney fees arising from any services, equipment, materials or supplies furnished, or the Subcontract obligations, including without limitation claims of subcontractors or suppliers contracting with Subcontractor through the date stated above.

It is expressly understood that this waiver has been given prior to receipt of payment at the request of the payer thereof, and is therefore contingent upon receipt in due course of payment in full of the amount set forth for the above-referenced Payment Request Number.

DATE: 5/8/2020

SUBCONTRACTOR OR SUPPLIER: 509 Excavating LLC

BY: 

(Authorized Signature)

TITLE: PRESIDENT

December 17, 2019

Max J. Kuney Construction
P.O. Box 4008
Spokane, WA 99220

RE: Contract 9385
Bullfrog Rd Vic – Concrete Rehab, Bridge Deck Rehab & Painting
Federal-Aid Project No. NHPP-0090(023), 0902(241), 0902(452)
Payment Withholding Final
Serial No. 026

Dear Mr. Griffith,

This letter serves as notification of WSDOT's intent to withhold payment in progress estimate 10 for the amount of \$167,316.48. This amount was calculated from the attached 509 Excavating (509) letter "Request for response" dated 12/10/19. In that letter, 509 acknowledges that there are disputed amounts between Max J. Kuney Construction and 509. WSDOT has based our withholding on 509's letter and payments reported in DMCS. According to DMCS, no payments have been made to 509 since September 2019, which is consistent with 509's letter. There may be withholding from prior payments that go back further than 509's pay estimates 7 and 8, but it is not clear at this time. It is WSDOT's understanding \$167,316.48 has been billed to Kuney by 509 (estimates 7 and 8) for performing Contract work for which the Contractor has been paid by WSDOT. The Contractor has reported \$0 paid to 509 in DMCS for the months of October and November. It is the responsibility of WSDOT under 1-08.1(1) to withhold the same amount of funds from the Contractor as was withheld since the issue has not been resolved by the next progress estimate.

As stated in WSDOT serial letter 021, "Payment Withholding", and further clarified in WSDOT serial letter 023, "Payment Withholding - Supplement to Serial Letter 021", the attached serial letter MJK SL-017 "Payment Status" dated 11/22/19 does not provide the required withholding justification specified in 1-08.1(1). Specifically, the Contractor has been asked to provide the following to 509 and with a copy to WSDOT:

- The amounts withheld **including any disputed** amounts. Given the ongoing nature of the withholding, WSDOT needs a clear accounting of when the withholding occurred for each invoice or billing received from 509. This was/is required within 10 calendar days of the withholding.
- This should include a reason for the withholding as well as a clear description of what the subcontractor needs to do to have the withholding released.

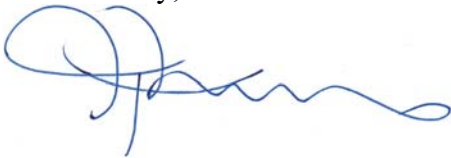
While the Contractor has notified 509 they need to provide lien releases, it is not clear which payment those lien releases represent or what amounts have been withheld (including the disputed amounts). Furthermore, it is not clear which lien releases have not been provided. The Contractor is reminded failure to comply with the requirements of 1-08.1(1) may be “... ***Reflected in the Prime Contractor’s Performance Evaluation.***”, result in “... ***Cancellation, termination or suspension of the Contract, in whole or in part.***”, or result in “... ***Sanctions as provided by the Contract; subcontract; or by law under applicable prompt payment statutes including RCW 39.04.250.***”

Please respond to this letter with the information required above within 7 calendar days or you will be subject to Suspension of Work for failure to comply with the Contract.

Regarding the disputes between Contractor and 509 Excavating, the Contract states that, “***If the parties agree, the Contracting Agency will make a third party neutral available provided the parties to the dispute agree that the cost of doing so is a split between them.***” If the Contractor and 509 are interested, let me know.

If you have any questions, please call me at 509-577-1859.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jerry Wood', with a long, flowing horizontal stroke extending to the right.

Jerry Wood, P.E.
Project Engineer

JW:jw

cc: File

Attachment1: 509 Letter “Request for Response”

Attachment2: MJK SL-017 “Payment Status”

Lee, Mark

From: Wood, Jerry
Sent: Tuesday, February 25, 2020 1:41 PM
To: Lee, Mark; Miller, Doug
Cc: Crane, Patricia
Subject: FW: 9385 - Kuneey Withholding
Attachments: MJK SL-027 January Payment Status.pdf; 9385 026 - Payment Withholding Final.pdf

Categories: 9385

Please release \$167,316.48 - \$95,769.80 = ~~\$71,456.68~~ on the next payment.

\$71,546.68
ML 3/3/2020

Thanks,
Jerry

From: Wood, Jerry
Sent: Tuesday, February 25, 2020 1:38 PM
To: Smith, Will <SmithW@wsdot.wa.gov>; Keeth, Jon <KeethJ@WSDOT.WA.GOV>; 'Brian White' <WhiteB@wsdot.wa.gov>
Cc: Crane, Patricia <CraneP@wsdot.wa.gov>
Subject: 9385 - Kuneey Withholding

We have withheld \$167,316.48 (WSDOT SL 026) based on a stated withholding from 509.

MJK SL-027 indicated \$95,769.80 was withheld with justification we, as a group agreed, meets spec. requirements.

I intend to pay the difference unless anyone disagrees.

I spoke with Kelly a couple minutes ago reminding him of future withholdings requiring notification...we should see a CC of a letter to 509 shortly for the last payment.

Thanks,
Jerry